

EXHIBIT D

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 KELVIN D. DANIEL, et al

11 Plaintiffs,

12 v.

13 SWIFT TRANSPORTATION
14 CORPORATION,

15 Defendant.

Case No. 2:11-cv-01548-PHX-ROS

**DEFENDANT SWIFT
TRANSPORTATION CO. OF
ARIZONA, LLC'S FIFTH
SUPPLEMENTAL DISCLOSURE
STATEMENT**

Assigned to: Hon. Roslyn O. Silver

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17
18 Pursuant to Fed. R. Civ. Proc. 16(a), Defendant Swift Transportation Co. of
19 Arizona, LLC ("Swift"), by and through undersigned counsel, hereby submits its Fifth
20 Supplemental Disclosure Statement.

21 **PRELIMINARY STATEMENT**

22 The content of this Disclosure Statement represents the information currently
23 known by Swift and is therefore provisional and subject to supplementation, amendment,
24 explanation, change, and amplification. It is not intended to represent all evidence that
25 Swift will present at trial; rather, Swift may supplement as further information is obtained
26 through discovery. The reason for the provisional nature of the statement is that Swift is
27 not fully aware of Plaintiffs' allegations and damages at this time.

28 Swift makes the following disclosure subject to and without waiving its right to

1 protect from disclosure: (a) any and all communications protected by the attorney-client
2 privilege; (b) any and all work product conclusions, opinions, or legal theories of Swift's
3 attorneys or other representatives concerning this litigation; and (c) any and all
4 confidential information.

5 Swift further reserves all objections to the introduction of the documents and
6 testimony of witnesses identified below at any hearing or trial, or in any motion, in this
7 lawsuit. This Preliminary Statement applies to each and every response provided in this
8 Fourth Supplemental Disclosure Statement and is incorporated by reference as though
9 fully set forth in all responses that follow. If any part of this statement is ever read to the
10 Court or jury, fairness requires that this Preliminary Statement also be read to indicate
11 that, at the time it was filed, only limited information had been acquired. All
12 supplemental information is in **bold**.

13 **I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION**
14 **THAT SWIFT MAY USE TO SUPPORT ITS CLAIMS OR DEFENSES**

15 As this litigation is in the early stages of discovery, Swift reserves the right to
16 supplement this portion of its Disclosure Statement. No one has been deposed by any
17 party as of the date of this Disclosure Statement. Swift can tentatively identify the
18 following individuals:

- 19 1. Kelvin D. Daniel
20 Plaintiff
c/o Stumphauzer, O'Toole

21 Mr. Daniel is expected to testify regarding the allegations contained in the
22 Complaint, his application process, orientation, his criminal history and disclosure of
23 same, and Swift's treatment of him consistent with the requirements of the Fair Credit
24 Reporting Act ("FCRA").

- 25 2. Tanna Hodges
26 Plaintiff
c/o Stumphauzer, O'Toole

27 Ms. Hodges is expected to testify regarding the allegations contained in the
28 Complaint, her application process, her criminal history and disclosure of same, and

1 Swift's treatment of her consistent with the requirements of the Fair Credit Reporting Act
2 ("FCRA").

3 3. Robert R. Bell, Jr.
4 Plaintiff
c/o Stumphauzer, O'Toole

5 Mr. Bell is expected to testify regarding the allegations contained in the Complaint,
6 his application process, orientation, his criminal history and disclosure of same, and
7 Swift's treatment of him consistent with the requirements of the Fair Credit Reporting Act
8 ("FCRA").

9 4. Shawn Driscoll, Director of Security
10 c/o John F. Lomax, Jr., Snell & Wilmer
One Arizona Center
11 400 E. Van Buren
Phoenix, AZ 85004-2202
12 (602) 382-6305

13 Mr. Driscoll is expected to testify regarding Swift's screening of job applicants
14 with criminal histories, his knowledge of Plaintiffs' application process and the
15 allegations contained in the First Amended Complaint. **More specifically, Mr. Driscoll**
16 **is expected to testify about how Swift uses criminal background reports, the**
17 **company's relationship with HireRight, what criteria Swift uses to qualify and**
18 **disqualify candidates, the various forms Swift has used since August 2006 to obtain**
19 **authorizations to conduct background searches on applicants and how Swift**
20 **communicates with applicants and other Swift employees about the background**
21 **information it collects on applicants, the various times and ways Swift security can**
22 **get involved in the hiring process, the various ways, stages, and reasons why a**
23 **candidate can be disqualified. He will also testify about the types of situations**
24 **where he becomes involved personally in the candidate review process.**

25 5. Gary Fitzsimmons, Vice-President of Security
26 c/o John F. Lomax, Jr., Snell & Wilmer
One Arizona Center
27 400 E. Van Buren
Phoenix, AZ 85004-2202
28 (602) 382-6305

Mr. Fitzsimmons is expected to testify regarding Swift's screening of job

1 applicants with criminal histories, his knowledge of Plaintiffs' application process and the
 2 allegations contained in the First Amended Complaint. **More specifically, Mr.**
 3 **Fitzsimmons is expected to testify about how Swift uses criminal background**
 4 **reports, the function, operation, and purpose of the Security Department, what**
 5 **criteria Swift uses to qualify and disqualify candidates, the various forms Swift has**
 6 **used since August 2006 to obtain authorizations to conduct background searches on**
 7 **applicants and how Swift communicates with applicants and other Swift employees**
 8 **about the background information it collects on applicants, the various times and**
 9 **ways Swift security can get involved in the hiring process, the various ways, stages,**
 10 **and reasons why a candidate can be disqualified. He will also testify about the types**
 11 **of situations where he becomes involved personally in the candidate review process.**

12 6. Angelica Flores, Security
 13 c/o John F. Lomax, Jr., Snell & Wilmer
 14 One Arizona Center
 15 400 E. Van Buren
 16 Phoenix, AZ 85004-2202
 17 (602) 382-6305

18 Ms. Flores is expected to testify regarding Swift's screening of job applicants with
 19 criminal histories, her knowledge of Plaintiffs' application process and the allegations
 20 contained in the First Amended Complaint. **More specifically, Ms. Flores is expected to**
 21 **testify about how Swift uses criminal background reports, what criteria Swift uses to**
 22 **qualify and disqualify candidates, the various forms Swift has used since August**
 23 **2006 to obtain authorizations to conduct background searches on applicants and**
 24 **how Swift communicates with applicants and other Swift employees about the**
 25 **background information it collects on applicants, the various times and ways Swift**
 26 **security can get involved in the hiring process, the various ways, stages, and reasons**
 27 **why a candidate can be disqualified. She will also testify about the types of**
 28 **situations where she becomes involved personally in the candidate review process.**

7. Michelle Cordova, Regional Recruiting Manager
 c/o John F. Lomax, Jr., Snell & Wilmer
 One Arizona Center
 400 E. Van Buren

Phoenix, AZ 85004-2202
(602) 382-6305

Ms. Cordova is expected to testify regarding her knowledge of Swift's application process for drivers, driver applicants who apply in-person versus not in-person, the various ways a candidate may apply to Swift, the DOT requirements for a candidate for a driving position, Swift's requirements for a candidate for a driving position, the Recruiting Department, its purpose, operations, and duties, the number and locations of recruiters involved in recruiting and hiring drivers, the interactions and ways of communicating with applicants, what processors do as part of the application process, how the recruiters work with the Security Department and what information is exchanged between them, how the recruiters work with HireRight, the various forms Swift has used since August 2006 to solicit, recruit, and qualify candidates for hiring including the applications, on-line questionnaires, the timing and procurement of consumer reports, the types of information available and not available to recruiters, how Swift handles candidates for rehire, and the situations in which Swift may order more than one report on the same person. In general terms, Ms. Cordova may also testify about offers Swift makes to applicants for drivers, why some of those offers are not accepted, and what information recruiters rely on to determine whether candidates are qualified to become drivers.

8. Douglas Driscoll, Recruiting
c/o John F. Lomax, Jr., Snell & Wilmer
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
(602) 382-6305

Mr. Driscoll is expected to testify regarding his knowledge of Swift's application process, the work recruiters do, the types of information available and not available to recruiter, the communications recruiters have with applicants, the various ways a candidate may apply to Swift, Swift's pre-qualification process, the DOT requirements for a candidate for a driving position, Swift's requirements for a candidate for a driving position, the various form Swift has used since August 2006

1 to solicit, recruit, and qualify candidates for hiring including the application, on-line
2 questionnaires, the timing and procurement of consumer reports, how Swift handles
3 candidates for rehire, the situations in which Swift may order more than one report
4 on the same person, how a recruiter works with the Security Department and what
5 information is exchanged between them. He will also testify about his interactions
6 and involvement in the recruitment of Kelvin Daniel.

7 9. Chad Bumgarner
8 c/o John F. Lomax, Jr., Snell & Wilmer
9 One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
10 (602) 382-6305

11 Mr. Bumgarner is expected to testify regarding Swift's orientation process, his role
12 in that process, and Mr. Daniel's voluntary disclosure of criminal convictions during
13 orientation that prompted an interview with Swift's security department and ultimately his
14 disqualification from employment at Swift.

15 10. Pat Ahern
16 c/o John F. Lomax, Jr., Snell & Wilmer
17 One Arizona Center
401 E. Van Buren
Phoenix, AZ 85004-2202
(602) 382-6305

18 Mr. Ahern is the Director of Talent Acquisition and Development for Swift.
19 He is expected to testify regarding his knowledge of Swift's application process for
20 non-drivers, the general number of non-driver applicants, the various ways a
21 candidate may apply to Swift, the various types of positions for which he has
22 responsibility and who is involved in those hiring decisions, Swift's requirements for
23 a candidate for a position, his department, its purpose, operations, and duties, how
24 that department works with the Security Department and what information is
25 exchanged between them, how that department works with HireRight, the various
26 forms Swift has used since August 2006 to solicit, recruit, and qualify candidates for
27 hiring including the applications, on-line questionnaires, the timing and
28 procurement of consumer reports, the types of information available and not

1 available to his department, and how Swift handles candidates for rehire. In general
2 terms, Mr. Ahern may also testify about the number of non-driver candidates hired
3 by Swift, the number of non-driver candidates offered positions with Swift, why
4 offers are not accepted, what information his department relies on to determine
5 whether candidates are qualified to become employees.

6 11. Bernice Ruiz
7 c/o John F. Lomax, Jr., Snell & Wilmer
8 One Arizona Center
9 400 E. Van Buren
10 Phoenix, AZ 85004-2202
11 (602) 382-6305

12 Ms. Ruiz worked in the Security Department and can testify about her
13 interview of Mr. Daniel on January 27, 2011 and the circumstances that led to that
14 interview and what followed that interview.

15 12. Patricia Ramos
16 c/o John F. Lomax, Jr., Snell & Wilmer
17 One Arizona Center
18 400 E. Van Buren
19 Phoenix, AZ 85004-2202
20 (602) 382-6305
21 M

22 Ms. Ramos worked in the Security Department and can testify about her
23 interview of Ms. Hodges on December 14, 2009 and the circumstances that led to that
24 interview and that followed that interview.

25 13. Tammy Ferguson
26 c/o John F. Lomax, Jr., Snell & Wilmer
27 One Arizona Center
28 400 E. Van Buren
Phoenix, AZ 85004-2202
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Ms. Ferguson is a recruiter for Swift. She ordered the DAC report for Mr. Daniel and can testify to that process.

14. Custodians of Records as necessary to establish foundation for the admission of documents.

15. Any witness identified or disclosed in any party's Disclosure Statements, motions, pleadings or discovery responses and not objected to by Defendants.

- 1 16. Any witness listed by Plaintiffs, and not objected to by Swift.
- 2 17. Any expert disclosed by any party.
- 3 18. Any persons subsequently identified through future investigation and
- 4 discovery and determined to be witnesses and not objected to by Swift.

5 **II. DOCUMENTS SWIFT MAY USE TO SUPPORT ITS CLAIMS OR**
6 **DEFENSES.**

7 As this litigation is in the early stages of discovery, Swift has not yet identified all
8 documents it may rely upon and reserves the right to supplement this portion of its
9 Disclosure Statement. Listing documents now is not an admission that they are
10 admissible for all purposes or any purpose. **Swift has been searching and reviewing**
11 **hundreds of thousands of document and producing responsive documents over the**
12 **last few months. Swift has not yet identified what documents it might use at trial to**
13 **certify a class action. Swift has disclosed and produced those documents on a rolling**
14 **basis and when Swift is in a position to identify with more specificity the particular**
15 **documents of those produced it may use, it will do so. Swift can tentatively identify the**
16 following documents:

- 17 1. Daniel Employment Application, Bates labeled STC000001-000005.
- 18 2. Daniel Swift Contact Management, Bates labeled STC000006-000010.
- 19 3. Daniel Driver Recruiting Process, Bates labeled STC000011-000014.
- 20 4. Daniel US MVR Report, Bates labeled STC000015-000020.
- 21 5. Daniel Widescreen National Criminal Search, Bates labeled STC000021.
- 22 6. Daniel Security File, Bates labeled STC000022-000024.
- 23 7. Bell Employment Application, Bates labeled STC000025-000029.
- 24 8. Bell Contact Management, Bates labeled STC000030-000034.
- 25 9. Bell Driver Recruiting Process, Bates labeled STC000035-000037.
- 26 10. Hodges Employment Application, Bates labeled STC000038-000042.
- 27 11. Hodges Contact Management, STC000043-000047
- 28 12. Hodges Driver Recruiting Process, Bates labeled STC000048-000051.

13. Hodges US MVR Report, SSN Check, Transportation Employment History, CDLIS+, Bates labeled STC000052-000057.

14. Hodges 20/20 Insight Bundled Request for Information, Bates labeled STC000058-000066.

15. Hodges Security File, Bates labeled STC000067-000084.

16. Company Driver Hiring Criteria, effective date April 1, 2011, Bates labeled STC000085-000090.

17. Swift Driver and Employment Applications, Bates labeled as STC000091-000125.

18. HireRight DOT and FCRA Disclosure and Authorization forms, Bates labeled as STC000126-000130.

19. FCRA Disclosure and Authorization forms, Bates labeled as STC000131-000133.

20. Washington releases to order driving records, Bates labeled as STC000134-000135.

21. Swift Recruiter Standard Operating Procedures, Bates labeled as STC000136-000145.

22. Conviction forms, Bates labeled as STC000146-000147.

23. Swift Ranking Criteria and Company Driver Hiring Criteria, Bates labeled as STC000148-000209.

24. Response to a Subpoena Duces Tecum from Southern State Community College, Bates labeled as STC000210-000330. Affidavit of Custodian of Records from Southern State Community College, Bates labeled as STC000211A-B.

25. Response to a Subpoena Duces Tecum from CRST International, Inc., Bates labeled as STC000331-000452.

26. Response to a Subpoena Duces Tecum from DHL, Bates labeled as STC000453-000455.

27. Applications and related documents Bates-labeled STC000456-099883 and

1 STC104789-113111 previously produced with Swift's responses to Plaintiffs' first set of
2 discovery requests.

3 28. Emails and related attachments Bates-labeled STC099884-104788 and
4 STC113112-126239 previously produced with Swift's responses to Plaintiffs' first set of
5 discovery requests.

6 29. Response to a Subpoena Duces Tecum from Keystone Diesel Institute,
7 Bates-labeled as STC126240-126317.

8 30. Response to a Subpoena Duces Tecum from Pennsylvania Department of
9 Labor and Industry, Bates-labeled as STC126318-126349.

10 31. Response to a Subpoena Duces Tecum from Lock Haven Distribution/
11 Rafko Enterprises, Bates-labeled as STC126350-126553.

12 32. Response to a Subpoena Duces Tecum from hhgregg, Bates-labeled as
13 STC126554-126558. Affidavit of Custodian of Records from hhgregg, Bates labeled as
14 STC126554A-B.

15 33. Response to a Subpoena Duces Tecum from Bellisio Foods, Bates- labeled
16 as STC126559-126608 and STC126608A-C.

17 34. Service agreement between USIS Commercial Services, Inc. and Swift
18 Transportation Company entered into on March 2, 2006, previously produced with Swift's
19 responses to Plaintiffs' first set of discovery requests as STC126609-126615.

20 35. Amendment to the Service Agreement dated December 17, 2009, previously
21 produced with Swift's responses to Plaintiffs' first set of discovery requests as
22 STC126616-126617.

23 36. Response to a Subpoena Duces Tecum from True Blue Inc./ Labor Ready,
24 Bates-labeled as STC126618-126680.

25 37. Applications and related documents, Bates-labeled STC126681-178720
26 previously produced with Swift's Amended Responses to Requests for Production.

27 38. Emails and related attachments Bates-labeled STC178721-212818
28 previously produced with Swift's Amended Responses to Requests for Production.

- 1 39. Application screen shots for Kelvin Daniels and Tanna Hodges, Bates-
- 2 labeled as STC212819-212831.¹
- 3 40. Response to a Subpoena Duces Tecum from C.R. England, Bates labeled as
- 4 SDT-CRE000001-000155 and SDT-CRE000156-000159.
- 5 41. Applications and related documents previously produced on June 8, 2012,
- 6 Bates-labeled as STC212832-254274.
- 7 42. Emails and related attachments previously produced on June 8, 2012, Bates-
- 8 labeled as STC254275-256173.
- 9 43. Response to a Subpoena Duces Tecum from Priority Courriers, Inc., Bates
- 10 labeled as SDT-PCI000001-000004.
- 11 44. Response to a Subpoena Duces Tecum from Teague Enterprises of Atlanta,
- 12 LLC, Bates labeled as SDT-TEA000001-000002.
- 13 45. Response to a Subpoena Duces Tecum from Moultrie Technical College of
- 14 Atlanta, LLC, Bates labeled as SDT-MOU000001-6.
- 15 46. Thumb drive previously produced on June 29, 2012, Bates labeled as
- 16 STC256174.
- 17 47. Hard drive previously produced on June 29, 2012, Bates labeled as
- 18 STC256175.
- 19 48. Orientation Sample Driver Employment Application, Bates labeled as
- 20 STC256176-256179.
- 21 49. **Applications and related documents previously produced on July 20,**
- 22 **2012, Bates-labeled as STC256180-312963.**
- 23 50. **Emails and related attachments previously produced on July 20, 2012,**
- 24 **Bates-labeled as STC312964-327021.**
- 25 51. **E-mail re FCRA adverse action disqualification process, Bates labeled**
- 26 **as 327022-327026.**
- 27 52. **E-mails re Swift FCRA procedures, Bates labeled as STC327027-**
- 28

¹ These documents are being produced in two formats, the original and an enlarged version, for ease of review.

1 327048.

2 53. Swift Security Video played during orientation, Bates labeled as
3 STC327049.

4 54. Emails and related attachments, Bates-labeled as STC327050-342389.

5 55. Acknowledgement authorizing Swift Transportation Inc. to conduct
6 investigation into background, Bates labeled as STC342390-342391.

7 56. Articles and information related to FCRA, Bates labeled as STC342392-
8 34205.

9 57. Morgan Lewis publication titled "FTC Cracks Down on Companies
10 that Fail to Give FCRA-Required Notice to Rejected Job Applicants and Fired
11 Workers" dated August 27, 2009, Bates labeled STC342406-342412.

12 58. All tangible items produced in response to requests for production,
13 interrogatories or attached to any party's Disclosure Statement, motion or pleading and
14 not otherwise objected to by Swift.

15 59. All admissible portions of deposition testimony, not otherwise objected to
16 by Swift.

17 60. Any exhibit listed by Plaintiffs and not otherwise objected to by Swift.

18 **III. COMPUTATION OF DAMAGES.**

19 Swift is not currently claiming any damages against Plaintiffs. Swift reserves the
20 right to seek to recover its costs and attorneys' fees incurred in connection with the
21 defense of this action.

22 **IV. INSURANCE AGREEMENT.**

23 As previously disclosed Swift has an Employment Practices Liability
24 Insurance policy that it believes provides coverage for the claims asserted. That
25 policy is through National Union Fire Insurance Co. of Pittsburgh, Pa. The claims
26 administrator for that policy is Chartis Claims, Inc. Swift also has an excess
27 insurance policy for which it believes coverage for the claim asserted exists. That
28 excess policy is through Twin City Fire Insurance Co., and the claims administrator

1 for that excess policy is The Hartford Financial Products Claims Dept. Upon
2 request, Swift will make the policies available for inspection and copying.

3 DATED this 23rd day of July, 2012

4 SNELL & WILMER L.L.P.

5
6 By: 

7 John F. Lomax, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that July 23, 2012, I sent via Federal Express a copy of the foregoing document to the following:

Dennis M. OToole
Anthony R. Pecora
Matthew A. Dooley
Stumphauzer OToole McLaughlin
McGlamery & Loughman Company
5455 Detroit Rd.
Sheffield Village, OH 44054

And via US mail a copy of the foregoing document to the following:

Leonard Anthony Bennett
Susan Mary Rotkis
Consumer Litigation Associates PC
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